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No. 445

Supreme Court of the United States

OCTOBER TERM, 1944

BROOKLYN SAVINGS BANK, Petitioner,

v.

WILLIAM J. O'NEIL, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

RESPONDENT'S SUPPLEMENTAL MEMORANDUM

MAX R. SIMON,
Attorney for Respondent.

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RESPONDENT'S SUPPLEMENTAL MEMORANDUM

This memorandum concerns itself solely with the presentation of several authorities dealing with the question of waiver or release under social and remedial legislation analogous to the Fair Labor Standards Act.

The liability imposed upon an employer under analogous social legislation such as Minimum Wage Statutes and Workmen's Compensation Acts cannot be waived or released by the employee.

The duties or liabilities imposed upon the employer, under remedial social legislation such as the Fair Labor Standards Act, State Minimum Wage Statutes and Workmen's Compensation Acts are all duties charged with the public interest because, in the legislative judgment, their performance or discharge would effectuate the policies of the legislation. Consequently, the law will not sanction a purported discharge of the employer's liability by means of a waiver or release procured from the employee—*despite*

*the absence of a non-waiver or non-settlement provision in the legislation.**

On all fours is the decision in *Cato* v. *Grendel Cotton Mills*, 129 S. E. 203, 132 S. C. 454 (S. C. Sup. Ct.) involving an agreement by an employee to waive benefits of legislation imposing, as here, further liability upon an employer for a delay in payment of wages as therein prescribed. The trial court held that the employer could not discharge his liability under this type of legislation by means of a waiver agreement with the employee, because *the parties "could not, by contract, add to the statute something the Legislators did not see fit to write into it"* (129 S. E. 204). In affirming the Supreme Court stated:

> May the corporation (employer) lawfully contract so to limit the performance of the absolute duty mandatorily imposed by the statute * * *.
>
> It (the legislation) is a public measure, enacted in the interest of the public welfare. *If so, the duty imposed upon * * * employers by this statute is one charged with a public interest, which is independent of the interests of the individual parties to the contract of employment, and cannot be made the subject of contractual barter and sale between the * * * employer and the laborer.*
>
> *The duty imposed by this statute upon * * * employers is a public duty in the discharge of which the public has an interest which is independent of the interests of the individual parties to the particular contract of employment in question*, and that against the performance of such public duty, the contractual stipulation here relied on (waiver), under the fundamental prin-

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* It long has been held that the benefits conferred upon employees under remedial, wage legislation are irrevocable benefits forced upon him by the public policy and they cannot be waived by the employee or anyone else. 11 G. Wash. L. Rev. 391, April 1943, No. 3. Cf. *Pilatos* v. *Hyde*, 119 Pac. (2d) 323 (Wash. Supt. Ct., 1941): "The natural right of the employer and the employee to contract between themselves must yield to what the legislature has established as the law."

> cipal that private citizens may not by contract abrogate the interest of the public in the discharge of duties imposed by statute, was utterly ineffectual * * * (129 S. E. 206-207) (Emphasis supplied). (Matter in parenthesis supplied.)

The same result obtained under the District of Columbia minimum wage law. In the case of *Groves* v. *Adelman*, 4 Wage Hour Rept. 274, 4 Labor Cases 60,415 (Mun. Ct., District of Columbia, 1941) it was held:

> The minimum wage law was not enacted merely to establish private rights. It was a solemn declaration by Congress, as a matter of public policy, that a special cloak of protection should be thrown around women * * *. That protection cannot be waived by individual employees, for it has now become the protection of the community as well. This plaintiff is but a single member of the community, and was without power to contract away her rights.

Similar are the holdings under various Workmen's Compensation Laws. In New York the principle is unchallenged that "the employer is not at liberty to enter into an arrangement with the employee whereby the employer is released from its obligation under the Workmen's Compensation Law." *Gould* v. *Champeny & Turk*, 249 A. D. 911, 292 N. Y. S. 530 (1937).

The decision in *P. Bronsten & Co.* v. *Hoffman*, 199 A. 121 (N. J. Ct. of App. 1937) is particularly cogent because of an attempt there, too, to urge that a private settlement of rights created under the New Jersey Workmen's Compensation Act would be valid, if approved by an Administrative Bureau charged with the enforcement of the Act. In rejecting such a contention and holding that nothing less than payment in full of the amounts therein prescribed could suffice, the court held:

> Insofar as it (the settlement) purports to effect an irrevocable surrender of a right to compensation granted by statute, the agreement, notwithstanding the

agreement of the Bureau, runs counter to the policy of the law and is voidable, if not void.

And, where the agreement was intended by the parties to be a final disposition of the claim for compensation, and full payment has been made in accordance with its terms, the sum so paid, if less than that prescribed by the statute, is considered merely a part payment * * *. We find no provision in the statute vesting in the Bureau authority to approve a compromise of a valid claim under its provisions for less than the sum thereby prescribed * * *. The policy of the law is not served by reduced payments to one entitled to its benefits.

This contract (settlement) is of concern to the State. The legislative policy is obviously grounded in social and economic considerations. The common interest vindicates the incidental restraint upon the liberty of contract.

The Compensation Bureau is a creature of the statute. Its jurisdiction is special and limited; and it is invested only with such authority as is expressly conferred, or such as is by fair implication and intendment incident to and included in the authority expressly granted for the enforcement of the statute. Any reasonable doubt of the existence of a particular power in the Bureau is to be resolved against the exercise of such authority.* (Matter in parentheses supplied.)

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* The exclusive remedy under Section 16(b) is the only means by which Congress intended the employer's civil liability under the Act to be enforced. *Fleming* v. *Miller*, 47 S. Supp. 1004, rev. on other grounds, 138 F. (2d) 629, cert. den. 321 U. S. 784. The authority of the Wage and Hour Administrator, aside from criminal sanctions, has been expressly limited to an application in equity "to restrain violations" of Sections 6 and 7 (Sec. 17 and 11a). Obviously, therefore, no administrative agency, nor anyone else, has the power to fritter away "rights that Congress specially legislated to protect." *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, ——. Further, the record does not support any claim of settlement between petitioner and the Wage Hour Division; but if we go outside of the record, as suggested by petitioner, it will be observed that the so-called "settlement", in which respondent never

(*Continued on following page*)

To like effect is the decision in *Russell* v. *Rudd,* 1923 A. C. 309, 12 B. R. C. 171, wherein the House of Lords held that no private settlement between employer and employee, no matter how fair and reasonable, and despite open disclosure of all the facts, could deprive the employee of the full benefits prescribed by the English Compensation Act. It was there observed that there could be no discharge of the employer's duties under the Act save in strict obedience to the legislative will. Only Lord Carson dissented, and this lone dissent is, coincidentally, based upon grounds similar to those urged at bar as cause for reversal. Lord Carson stated, in dissenting:

> The broad question is whether * * * it is competent for the workman and the employer to settle or compromise a claim. If the answer is in the negative (as it was) one of the results will be that it will not be possible in any case, however doubtful or raising any of the difficult questions which so often arise as to whether, for example, the workman is entitled to compensation under the Act, for the employer and the workman to agree to a settlement of the disputed points by payment of a lump sum, and the parties, however willing they may be to agree, or however beneficial the agreement may be, will be left to litigate such disputed questions. My view is that the power to compromise their disputes being inherent in all persons of full contractual capacity, that power is not in any particular case to be regarded as taken

participated and of which he was completely ignorant, consisted of nothing more than a verification by the Wage Hour Division of the accuracy of petitioner's own computation of the back overtime due respondent. This computation was, obviously, based upon records regularly kept by it during the entire period of respondent's employment indicating the number of hours worked by him each week and the salary received (R. 16). Petitioner, without approval or authorization from the Wage Hour Division, prepared its own form release and had respondent sign it when it made payment of the back overtime concededly earned by him. At the time of the payment, petitioner did not disclose to respondent that he had any additional rights under the Act or, that in accordance with its arrangements with the Wage Hour Division all that respondent was supposed to sign was a receipt for the back wages. (Pet. Reply Brief, pp. 15-16, Note 3.)

away by any other than very plain statutory words (1923 A. C. 331, 335). (Matter in parentheses supplied.)

Even where compensation acts specifically provide for private settlements of disputed claims, it is recognized that such settlements are not conclusive as any "purported release" of the employer from payment of the full amount due under the statute "is restricted within limits unknown to the common law:" *Sugrue* v. *Champion,* 128 Conn. 574, 24 A. (2d) 890, 893.

Only recently the Georgia Supreme Court, in considering Section 16(b) of the Fair Labor Standards Act, unanimously held in the case of *Butler* v. *Carter,* 8 Wage Hour Rept. 92, 9 Labor Cases par. 62,507 (Jan. 6, 1945):

> As has been well recognized, the rights provided to the employee are not his alone, but are affected with a public interest, and they may not be waived or renounced whether before or after they become due (*Broughton* v. *Atlantic Co.*, 54 F. Supp. 185, remanded by the Fifth Circuit Court of Appeals to the District Court in order that certain disputed issues of fact could be determined) * * *.
>
> Because of the very nature of the objectives of this legislation, they become public problems in which every taxpayer has a vital interest. Therefore, it becomes very clear that the requirements of the Fair Labor Standards Act cannot be avoided by any agreement * * * that may be entered into by the employer and the employee.

Similar is the determination in *Fiedler* v. *Potter,* 6 Wage Hour Rept. 85 (Tenn. Ct. of App., 1942) where the court held:

> These releases could not and did not relieve the defendants of their liability under the Act in question. To hold otherwise would nullify its provisions * * *. The Act is mandatory in its provisions and no settlement made between the employer and employee outside of its provisions is binding.

This determination was affirmed in 172 S. W. (2d) 1007 (Tenn. Sup. Ct., 1943) with the observation that these "releases were ineffective, in view of the mandatory provisions of the Federal Act to relieve against violation of its terms."

Obviously, Section 16(b) was designed, not merely to provide the means of enforcing the employer's civil liability under the Act, but to serve the more important function of relieving the Government of part of the burden of enforcement (cf. 83 Cong. Rec. 9264—Conference Committee). Acting as a strong deterrent to violation, this section constitutes the protective measure designed by Congress to promote compliance with the terms and provisions of the Act, and thereby provide the most practical and, indeed, the most effective means of effectuating the public policy with which the legislation is profoundly affected. As observed by the Senate Conference Committee, in considering an identical provision in the Emergency Price Control Act of 1942, Sec. 205 (e), 56 Stat. 23 (1942), 50 U. S. C., Appendix Supp. III, Sec. 901, 925(a), such statutory provisions "have proved valuable in the enforcement of * * * regulatory statutes, such as the Fair Labor Standards Act, both to relieve the Government of a part of the burden of enforcement and to deter initial violation" Senate Report No. 931, 77th Cong. 2d Sess. p. 9 (1942). See, also, 12 G. Wash. L. Rev. p. 472 (1943): "The purpose of the provision is to aid in the enforcement of the Act" (cf. *Virginia Electric Co.* v. *N. L. R. B.*, 319 U. S. 533). Therefore, to sustain a release or waiver would create a result which, even if induced by proper motives, would undermine the effective enforcement of the Act. *U. S.* v. *Reading Co.*, 253 U. S. 26; *Coaker* v. *Soper*, 53 F. (2d) 190, 191, 192.

Thus, as recently stated by the New York Court of Appeals in rejecting a waiver under analogous social legislation based upon inequality between the parties:

> We may not give judicial sanction to means designed to evade the legislative will. * * *. Believing as we do,

> that the enactment * * * was prompted by considerations of public policy, it is not within the function of the judicial process to weaken the protective measure which the legislators chose to adopt. *Wood* v. *Horgan*, 291 N. Y. 426.

It is, therefore, respectfully submitted that the release obtained from respondent is invalid and cannot discharge petitioner's mandatory liability to pay liquidated damages. "No plan so obviously inconsistent with the statutory purpose can lay a claim to legality", for it "would exalt ingenuity over reality and would open the door to insidious disregard of the rights protected by the Act." *Walling* v. *Helmerich & Payne*, U. S. , Nov. 6, 1944.

CONCLUSION

The judgment appealed from should be affirmed.

Respectfully submitted,

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Attorney for Respondent.